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La Corte Edu sul rispetto del diritto di proprietà privata
(CEDU, sez. I., sent. del 5 ottobre 2023, ric. n. 22716/12)

Il ricorso proposto contro la Polonia trae origine dalla denunciata violazione dell'art. 1 del Protocollo n. 1 alla Convenzione Edu per effetto del mancato risarcimento del danno subito dall'impresa del ricorrente a causa di decisioni fiscali illegali e sproporzionate applicate da parte delle autorità statali. Come ricorda la Corte di Strasburgo, nel contesto di un'ingerenza sui diritti di proprietà privata, il primo è più importante presupposto è quello della legalità della misura restrittiva. Ciò significa che l'ingerenza dovrebbe essere conforme alla legge nazionale - la quale dovrebbe tenere conto del giusto equilibrio da raggiungere tra gli interessi concorrenti dell'individuo e della comunità nel suo insieme - e che la legge stessa dovrebbe consentire al richiedente di prevedere le conseguenze della sua condotta.

Quanto al diritto al risarcimento la Corte osserva che sebbene questo non sia espressamente contemplato dall'art. 1 del Protocollo, tuttavia esso costituisce un fattore da prendere in considerazione per determinare se sia stato raggiunto un "giusto equilibrio" tra gli interessi contrapposti.

Nel merito, la Corte ritiene che la limitazione del diritto del ricorrente al rispetto dei suoi beni non sia di per sé criticabile, soprattutto alla luce dello scopo legittimo perseguito e del margine di apprezzamento concesso dal secondo paragrafo dell'art. 1 del Protocollo n. 1 alla Convenzione. Tuttavia, il rischio di un tale sistema è che possa limitare irragionevolmente la capacità del richiedente di amministrare i propri beni, in particolare se i procedimenti sono prolungati, come nel caso di specie. Inoltre, la Corte non è convinta che le autorità nazionali abbiano dato sufficiente considerazione alla possibilità di adottare misure meno invasive rispetto alla proprietà del richiedente. La Corte osserva inoltre che il tribunale di primo grado aveva accolto la domanda del ricorrente e aveva concesso un risarcimento per un importo prossimo a quello da Egli richiesto; pertanto, nonostante l'annullamento definitivo di tale sentenza da parte della Corte d'Appello, i giudici sono del parere che l'accertamento dei fatti effettuato dal tribunale di primo grado indicasse che il ricorrente aveva effettivamente subito un danno patrimoniale significativo e che il danno in questione era stato direttamente causato dalle misure ordinate dalle autorità fiscali.

Ciò premesso, la Corte ritiene dunque che le restrizioni imposte sui beni personali e commerciali del ricorrente per tre anni abbiano costituito un onere individuale ed eccessivo, sconvolgendo il "giusto equilibrio" che dovrebbe essere mantenuto tra la tutela dei il diritto di proprietà e le esigenze dell'interesse generale. Di conseguenza, c'è stata una violazione dell'Articolo 1 del Protocollo N.ro 1 alla Convenzione.

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EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF XXX v. POLAND

(Application no. 22716/12)

JUDGMENT

STRASBOURG

5 October 2023

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Poland,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Alena Poláčková,

Krzysztof Wojtyczek,

Lətif Hüseynov,

Péter Paczolay,

Ivana Jelić,

Gilberto Felici, *judges*,

and Renata Degener, *Section Registrar,*

Having regard to:

the application (no. 22716/12) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr XXX ("the applicant"), on 5 April 2012;

the decision to give notice to the Polish Government ("the Government") of the complaint concerning the lack of compensation for damage that the applicant's business had suffered as a result of unlawful and disproportionate tax decisions, and to declare the remainder of the application inadmissible;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the Helsinki Foundation for Human Rights, which was granted leave to intervene by the President of the Section;

Having deliberated in private on 12 September 2023,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a lack of compensation for disproportionate interference by the tax authorities with the applicant's business.

THE FACTS

2. The applicant was born in XXX and lives in XXX. He was represented by Mr Z. Barwina, a lawyer practising in Szczecin.

3. The Government were represented by their Agent, Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

5. The applicant had a business trading in tobacco products.

I. THE SEIZURE OF ASSETS

6. On 19 May 2003, following a tax audit, the Szczecin Tax Office gave two decisions ordering the seizure of the applicant's assets to secure the payment of his business's excise-tax liabilities for several months in 2002 and 2003. In the preliminary assessment, those liabilities had been calculated at 708,372 Polish zlotys (PLN – 163,067 euros (EUR), as per the National Bank of Poland's official exchange rate on the date in question).

7. The decisions featured the following assessment of the assets belonging to the applicant's business, as reported in December 2002. The value of the business's fixed assets (*majątek trwały*) was assessed at PLN 203,327 (EUR 46,805). The fixed assets comprised buildings and offices, machines and equipment, and vehicles. The value of the business's current assets (*majątek obrotowy*) was assessed at PLN 1,750,848 (EUR 403,045). Those assets comprised stocks of articles for sale; payments due for sales, taxes, customs duty and social insurance; and money in the amount of PLN 221,840 (EUR 51,067). The applicant's own capital was estimated at a value of PLN 609,734 (EUR 140,360). The tax office made further calculations of the applicant's debts, loans and profits for the past years, and of his business liquidity. On the basis of all those elements, it was concluded that the applicant's business would not be able to generate sufficient profit to pay the excise-tax liability which was under assessment and that a risk existed that the applicant would evade the payment of that tax obligation once it was established.

8. On 26 May 2003 the applicant appealed against those decisions on the grounds that there was no legal basis for the seizure of his assets because his future excise-tax liability did not exist and there was no risk that if such liability were established, he would not discharge it.

9. The measures ordered on the basis of the above-mentioned decisions were: the freezing of the business's two bank accounts; the seizure of the business's six cars, including delivery vehicles; and the setting-up of mortgages on four properties belonging to the applicant.

10. On 6 June 2003 the applicant asked that the measures in question be replaced with the setting-up of mortgages on two different properties belonging to him.

11. On 5 August 2003 the head of the tax office (*naczelnik*), partly granting the applicant's request, lifted the measure in respect of one bank account and established a mortgage on the two properties indicated by the applicant, the value of which was assessed at PLN 180,000 (EUR 41,256).

12. On 5 August 2003 the Szczecin Tax Office issued two decisions dismissing the appeals against the decisions of 19 May 2003. It observed, *inter alia*, that in the decisions the tax office had made a

thorough financial and economic analysis of the applicant's business situation, leading to the conclusion that the value of the business's fixed assets amounted to only 10% of its total assets and fell short of the amount of possible excise-tax liability.

II. TAX LIABILITIES

13. On 21 August 2003 the Szczecin Tax Office gave nine decisions establishing the business's excise-tax liabilities for several months in 2002 and 2003. The tax office considered that, as the business had been selling cigarettes on which a maximum price had not been indicated, it was liable to pay excise tax under section 37(7) and (8) of the Value-Added and Excise Tax Act of 8 January 1993 (*Ustawa o podatku od towarów i usług oraz o podatku akcyzowym* – "the 1993 Excise Tax Act").

14. The total amount of the excise-tax liability was PLN 803,754 (EUR 184,622).

15. As established by the civil court, on 17 November 2003 the Szczecin Customs Office refused a request lodged by the applicant for a stay of execution in respect of the nine decisions he had contested. On 28 October 2003 the head of the tax office had refused an objection (*zarzut*) lodged by the applicant to the seizure of his and his business's assets on the basis of the nine decisions of 21 August 2003.

16. On 2 August 2004 the tax office's decisions were upheld by the Szczecin Customs Chamber.

17. The Government submitted that while the appellate proceedings were ongoing, on 19 July 2005 the Regional Administrative Court had stayed the execution of three decisions and on 14 March 2006 it had stayed the execution of six decisions issued in the applicant's case. Copies of those decisions have not been sent to the Court.

18. On 24 April 2006 the Szczecin Customs Chamber revoked all its decisions of 2 August 2004, finding that they were tainted with a breach of substantive law. Those decisions had resulted in double taxation of the goods sold by the applicant. They were thus contrary to section 38(2)(2a) of the VAT Act and to section 12(1)(4) of the ordinance of the Minister of Finances of 22 March 2002 on excise tax (*Rozporządzenie Ministra Finansów w sprawie podatku akcyzowego* –"the 2002 Ordinance"). The customs chamber also pointed out that no legal basis existed for the imposition of excise tax on sellers who traded in goods on which excise tax should have been paid by the tax authorities themselves.

19. The Government submitted that on the same date, the Szczecin Customs Chamber had issued a decision establishing the overpayment made by the applicant's business. A copy of that decision has not been furnished to the Court.

20. On 25 May 2006 the Regional Administrative Court discontinued the proceedings. It found that in the light of the decisions of 24 April 2006 by which the contested decisions had been revoked, there was no call to continue the examination of the applicant's appeal.

III. CIVIL PROCEEDINGS FOR COMPENSATION FOR UNLAWFUL TAX DECISIONS

21. On 15 January 2009 the applicant lodged a civil action for compensation against the State Treasury under the provisions of the Civil Code, which governed the civil liability of the State for damage arising from unlawful acts and decisions (see paragraphs 44-47 below). He claimed PLN 790,839 (EUR 187,191) in respect of the profit his business had lost in the period from May 2003 to June 2006. He contended that the damage had arisen from the freezing of the business's bank accounts and the seizure of other possessions; and that those measures, which had been taken on

the basis of unlawful decisions by the authorities, had prevented him from running his business in the above-mentioned period.

22. On 27 April 2010 the Szczecin Regional Court (*Sąd Okręgowy*) awarded the applicant PLN 759,999 in compensation (EUR 183,132 as per the applicant's calculation based on the National Bank's official average monthly exchange rate for April 2010).

23. The domestic court found that the applicant had suffered damage because of the impossibility of continuing his business activity. Firstly, his business had been made to pay tax which should not have been paid. Secondly, without a bank account and vehicles, which had been seized, the applicant had been unable to continue operating his business.

24. To calculate the amount of damage in question, the court reviewed the business's records and the applicant's corporate and personal income-tax statements from 1999 onwards. The documents revealed that the applicant's business had generated a loss and sales had fallen after the seizure of the assets. The court also had regard to the report and oral submissions of a court-appointed expert who had assessed the applicant's loss at PLN 768,328 over a period of thirty-eight months. The court nevertheless challenged that sum, observing that the tax decisions in issue had affected his business activity from May 2003 until April 2006 inclusive, that is, for thirty-six months.

25. The court then confirmed that the damage sustained by the applicant had resulted from a series of decisions issued during the tax proceedings described in paragraphs 6-20 above. In particular, without the decision of 2 August 2004 (see paragraph 16 above), which had led to the freezing of the applicant's bank accounts, he would have been able to continue operating his business.

26. Lastly, the domestic court had no doubt that the decisions of 21 August 2003 and 2 August 2004 were not in accordance with the law (*sąd nie miał wątpliwości, że decyzje organów ... nie były zgodne z prawem*) within the meaning of Article 417 of the Civil Code as applicable before 1 September 2004. The court also referred to an acknowledgment by the tax office to the effect that section 38(2)(2a) of the VAT Act and section 12(1)(4) of the 2002 Ordinance had been breached by the decisions.

27. In view of the above considerations, the domestic court held that the legal conditions that Article 417 of the Civil Code attached to the civil liability of the State – namely, the existence of damage, an unlawful decision issued in the exercise of public powers and a causal link between the decision and the damage – had been met.

28. The State Treasury appealed against that judgment. Firstly, it argued that the impugned tax decisions had not been manifestly unlawful because the provisions on the exemption of cigarettes from excise tax had given rise to serious discrepancies in their application. The first-instance court had thus failed to qualify the "unlawfulness" required for the application of Article 417 § 1 of the Civil Code. Secondly, it was argued that the first-instance court had erred in the calculation of the damage. In particular, in his oral submissions the court-appointed expert had overestimated the losses for one of the years in question.

29. On 22 December 2010 the Szczecin Court of Appeal allowed the appeal brought by the State Treasury and dismissed the applicant's action.

30. The appellate court agreed with the first-instance court that the source of the damage sustained by the applicant was the decision of 2 August 2004. The appellate court did not make any other findings in respect of the damage in question or the causality nexus.

31. It then confirmed that the decision of 24 April 2006 constituted a ruling on unlawfulness as required by Article 4171 § 2 of the Civil Code (see paragraphs 47, 48 and 52 below).

32. The appellate court then elaborated on the State Treasury's argument that there had been serious discrepancies in the interpretation of the provisions regulating the question of whether the cigarettes sold by the applicant in packets purchased from the administrative enforcement bodies and not marked with an individual retail price had been exempt from excise tax under the Ordinance of the Minister of Finance of 2002.

33. It was observed that in its two full-bench resolutions (of 1 June 2007 (I FPS 6/07) and 19 February 2009 (I FPS 3/09) the Supreme Administrative Court, having examined legal questions related to the issue raised by the case at hand, had ultimately expressed divergent legal views. That, in the appellate court's view, demonstrated that the issue was of a complex character and that it had given rise to difficulties in interpretation.

34. The appellate court concluded that it had therefore been legitimate on the part of the tax office to opt for one of those interpretations. As a result, the error of law on the part of the tax office was not of a manifest character which would render the impugned decision unlawful. To give rise to the State's civil liability, an error of law had to be qualified (classifiable), fundamental and manifest (*kwalifikowany, elementarny i oczywisty*). The applicant was ordered to bear costs totalling PLN 26,205 (approximately EUR 6,566).

35. On 16 November 2011 the Supreme Court refused to examine a cassation appeal lodged by the applicant.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. TAX LAW

36. Excise tax was regulated at the material time by the 1993 Excise Tax Act and the 2002 Ordinance, both of which were repealed on 1 May 2004.

37. Under section 37(7)(2) of the 1993 Excise Tax Act, a business which was not a producer or importer of cigarettes was liable to pay excise tax on the sale (occurring after the cut-off date of 1 March 2001) of cigarettes on which a maximum retail price was not indicated. Section 37(8) regulated the excise-tax rate on such sales.

38. Section 38(2) (2a) authorised the Minister of Finance to exempt certain groups of taxpayers from their tax obligation in order to avoid double taxation.

39. Section 12(1)(4) of the 2002 Ordinance read as follows:

"Taxpayers selling merchandise which is subject to excise tax shall be exempt from the obligation to pay excise tax with the exception of subjects selling goods liable to excise tax for which such tax has not already been paid."

40. The above provision of the 2002 Ordinance had given rise to two divergent lines of judicial practice. The Supreme Administrative Court was initially consistent in granting the excise-tax exemption to businesses selling cigarettes as described in section 37(7) of the 1993 Excise Tax Act (see judgments: no. I FSK 172/05 of 4 November 2005; no. I FSK401/05 of 4 January 2006; and no. I FSK 521/05 of 20 January 2006). On 4 April 2006 it reversed its approach (see judgment no. I FSK 762/05). As a result, the full bench of the Supreme Administrative Court was twice called on to authoritatively resolve a "legal issue raising serious doubts".

41. On 1 June 2007 the Supreme Administrative Court thus issued a resolution holding that, under the law applicable in 2003, excise taxpayers who had been selling cigarettes on which the maximum retail price had not been indicated had been exempt from the tax obligation under section 12(1)(4) of the 2002 Ordinance (resolution no. I FPS 6/07). On 19 February 2009 the Supreme Administrative Court reiterated that ruling in respect of the previous ordinance regulating excise tax between 2001 and 2003 and section 12(1)(4) of the 2002 Ordinance (resolution no. I FPS 3/09).

II. STATE LIABILITY FOR DAMAGE CAUSED BY UNLAWFUL DECISIONS

42. State liability for damage caused by unlawful decisions is regulated by Article 77 § 1 of the 1997 Polish Constitution, which entered into force on 17 October 1997, and Articles 417 et seq. of the Polish Civil Code.

43. Article 77 of the Polish Constitution reads as follows:

"1. Everyone is entitled to compensation for damage caused by the unlawful acts of a public authority.

2. No statute shall bar access to a court for persons seeking redress for any breach of their freedoms or rights."

44. In the version applicable until 1 September 2004, Article 417 § 1 of the Civil Code, which lays down a general rule, read as follows:

"The State Treasury shall be liable for damage caused by a State official in the performance of the duties entrusted to him or her."

45. On 1 September 2004 the Law of 17 June 2004 on Amendments to the Civil Code and other Statutes (*Ustawa o zmianie ustawy – Kodeks cywilny oraz niektórych innych ustaw* – "the 2004 Amendment Act") entered into force. The relevant amendments were in essence aimed at widening the scope of the State Treasury's liability in tort.

46. Under the transitional provisions of section 5 of the 2004 Amendment Act, Article 417 as applicable before 1 September 2004 applies to all events and legal situations that subsisted before that date.

47. Article 417 § 1 of the Civil Code, as applicable after 1 September 2004, provides:

"The State Treasury, or [as the case may be] a self-government entity or other legal person responsible for exercising public authority, shall be liable for any damage (*szkoda*) caused by an unlawful act or omission [committed] in connection with the exercise of public authority."

48. Article 4171 § 2 of the Civil Code reads as follows:

"Where damage has been caused by the delivery of a final ruling or a final decision, redress for such damage may be sought after the unlawfulness [of the ruling or decision] has been established in appropriate proceedings, except where otherwise provided by law."

49. In the practice of the domestic courts, a claim under Article 4171 of the Civil Code does not arise unless the unlawfulness of the action or omission resulting in damage has been declared in separate proceedings (*prejudykat*) (see the Słupsk Regional Court's judgment of 2 February 2017, IC 342/16).

50. Two different interpretations of the term "unlawfulness" have developed in judicial practice.

51. One approach requires unlawfulness to have been caused by a manifest or flagrant error of law which is unquestionable and of an elementary and qualified nature (see the Gdańsk Regional Court's judgment of 14 November 2012, III Ca 140/12). Therefore, the issuing of a ruling which is based on one of several possible judicial interpretations of a legal provision does not constitute such a

manifest and flagrant breach of law (see the Supreme Court's judgments of: 4 December 2013, II BP6/13; 12 September 2008, I BP2/08; and 9 December 2020, V CSK 80/20).

52. According to the other approach, unlawfulness must be understood objectively, that is to say, as a conflict between the act/omission and the legal order defined *lato sensu*, which excludes the possibility of any distinction as to the scale or degree of the unlawful conduct. There is therefore no legal basis or need to require that the liability under Article 417 of the Civil Code should arise only from a manifest breach of the law (see, among many other rulings, the Supreme Court's judgments of: 8 January 2002, I CKN 581/99; 6 February 2002, V CKN 1248/00; 18 June 2018, V CSK 422/09; 19 April 2012, IV CSK 406/11; 19 September 2018, ICSK 585/17; and 25 February 2022, II CSKP 173/22; the Supreme Court's resolution given by seven judges of 26 April 2006, III CZP 125/05; and the Constitutional Court's judgment of 4 December 2001, SK 18/00). The second approach holds that rigorous liability of public authorities for the consequences of their unlawful acts is already sufficiently ensured through the assessment of the unlawfulness of a decision in separate proceedings and through the requirement of causality between the acts complained of and damage flowing from them. That aim cannot be achieved by making distinctions in the scale or degree of unlawfulness, as that would go beyond the scope of the provision in question and would have no statutory basis (see the Supreme Court's judgment of 26 April 2001, III CKN 966/00; the Łódź Regional Court's judgment of 22 April 2016, II Ca 177/16; see also the Supreme Court's resolution given by seven judges, cited above; and the Supreme Court's judgments: of 11 March 2008, II CSK 58/07; 20 August 2009, II CSK 68/09; and 18 June 2010, V CSK 422/09). Moreover, the term "flagrant breach of the law" has a highly discretionary character (see the Supreme Court's judgment of 19 April 2012, IV CSK 406/11, and the Łódź Regional Court's judgment of 22 April 2016, cited above). The second interpretation is dominant in current judicial practice (see the judgments of: the Warsaw Court of Appeal of 5 November 2015, VI Aca 1593/14; the Szczecin Court of Appeal of 28 June 2017, I Aca 133/17; and the Płock Regional Court of 23 April 2018, I C 863/12).

53. "Damage" as referred to in the above-mentioned provisions means pecuniary damage, which is defined in Article 361 § 2 of the Civil Code as "losses and lost profits which an aggrieved party could have made if he or she had not sustained damage."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

54. The applicant complained under Article 1 of Protocol No. 1 to the Convention that his business had sustained serious losses because of the tax decisions which had been declared unlawful before he had lodged his application with the Court. The damage in question had not been redressed. The civil court, in rejecting the applicant's action for compensation for pecuniary damage, had applied the law in a manner which disproportionately protected the State Treasury against claims brought by private individuals. As a result, the existing provisions guaranteeing a right to compensation for damage caused by unlawful acts of the State had become, in his case, ineffective and illusory. Overall, an excessive individual burden had been imposed on the applicant.

55. The relevant Article reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

1. *Government's preliminary objection*

56. The Government raised a preliminary objection, arguing that the application was incompatible *ratione materiae* with the Convention.

(a) The Government

57. The Government argued that the applicant did not have any property right, asset, legitimate expectation or substantive interest which would fall under the protection of Article 1 of Protocol No. 1 to the Convention. In particular, they submitted that the favourable ruling of the first-instance court, which was ultimately reversed on appeal, had not conferred on the applicant any property right which would fall under the protection of Article 1 of Protocol No. 1.

(b) The applicant

58. The applicant submitted that his right to obtain compensation for the damage which his business had sustained did not originate in the favourable first-instance judgment but rather arose from the serious, negative and disproportionate consequences of the contested tax decisions before they had been invalidated. Those consequences had been acknowledged by the domestic court, even though the applicant's action for compensation had ultimately not been granted.

59. The applicant asserted that the first-instance judgment was of relevance in so far as it confirmed that the causality and other conditions for the State's civil liability had been met in the circumstances of his case. He stressed that the existence of the impugned unlawful decisions, the damage suffered and the causal link between the two were indisputable. The applicant essentially argued that since the interference with his right to the peaceful enjoyment of possessions was uncontested, he had a legitimate expectation that the claim for damages, which under the law arose from that interference, would be satisfied.

2. *The Court's assessment*

(a) General principles

60. The Court reiterates that Article 1 of Protocol No. 1, which guarantees the right to the protection of property, contains three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled, among other things, to control the use of property in accordance with the general interest. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, and other

cases cited therein; *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom* [GC], no. 44302/02, § 52, ECHR 2007-III; *Iatridis v. Greece* [GC], no. 31107/96, § 55, ECHR 1999-II; *Immobiliare Saffi v. Italy* [GC], no. 22774/93, § 44, ECHR 1999-V; and *Hábenczius v. Hungary*, no. 44473/06, § 27, 21 October 2014).

61. The seizure of property in the context of legal proceedings normally relates to control of the use of property, which falls within the ambit of the second paragraph of Article 1 of Protocol No. 1 (see, among many other authorities, *Łysak v. Poland*, no. 1631/16, § 76, 7 October 2021). The same is true for business losses resulting from general restrictions on the sale of a particular commodity or from the withdrawal of an individual licence (see *Tre Traktörer AB v. Sweden*, 7 July 1989, §§ 54-55, Series A no. 159, in relation to the withdrawal of a liquor licence from a restaurant; *Pinnacle Meat Processors Company and Others v. the United Kingdom* (dec.), no. 33298/96, 21 October 1998, in relation to the loss of meat processing business resulting from restrictions imposed on the use of specified bovine material; and *Ian Edgar (Liverpool) Ltd v. the United Kingdom* (dec.), no. 37683/97, ECHR 2000-I in relation to the loss of business resulting from the prohibition of handguns). The Court has also accepted that there was control of the use of property where the applicant company, having lost opportunities on the market, had suffered a decrease in its enterprise value (see *Könyv-Tár Kft and Others v. Hungary*, no. 21623/13, § 43, 16 October 2018, in relation to a decrease of equity value following the creation of a State monopoly in the schoolbook distribution market, and *Pannon Plakát Kft and Others v. Hungary*, no. 39859/14, §§ 44 and 46, 6 December 2022, in relation to a decrease in enterprise value of the company and the partial loss of economic value of the company's inflexible and non-variable assets due to statutory restrictions on the company's activity (roadside advertising hoardings) for which the assets in question had been used.

62. Irrespective of the above, in certain circumstances, a "legitimate expectation" of obtaining an "asset" may also enjoy the protection of Article 1 of Protocol No. 1. Thus, where a proprietary interest is in the nature of a claim, the person in whom it is vested may be regarded as having a "legitimate expectation" if there is a sufficient basis for the interest in national law, for example where there is settled case-law of the domestic courts confirming its existence (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 52, ECHR 2004-IX; *Draon v. France* [GC], no. 1513/03, § 68, 6 October 2005; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I; and *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 31, Series A no. 332).

63. No legitimate expectation can be said to arise, however, where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50).

64. In this connection, it is in the first place for the national authorities, and in particular the courts, to construe and apply the domestic law. The Court's jurisdiction to verify that domestic law has been correctly interpreted and applied is limited, and it is not its function to take the place of the national courts; rather, its role is to ensure that the decisions of those courts are not flawed by arbitrariness or otherwise manifestly unreasonable (see *Topallaj v. Albania*, no. 32913/03, § 89, 21 April 2016, and *Weitz v. Poland* (dec.), no. 37727/05, 23 June 2009).

(b) Application of these principles to the present case

65. In the present case, the Government's objection of incompatibility focused on the alleged lack of a legitimate expectation of obtaining a favourable ruling in respect of compensation for the loss of business (see paragraph 57 above).

66. The applicant's argument, in turn, was based on both the doctrine of control of the use of property and the doctrine of legitimate expectation. The applicant thus submitted that his property right was primarily derived from the damage he had sustained, namely the losses resulting from the unlawful tax decisions concerning his business and from the seizure of his property (see paragraphs 58 and 59 above). In that connection, the applicant calculated the profit which his business had allegedly lost in the period from May 2003 to June 2006, that is, during the time when his ownership rights in respect of his business's assets and his own private assets had been affected by decisions to impose interim seizure measures (of 19 May 2003) and the subsequent decisions relating to his excise-tax liabilities (of 21 August 2003 and 2 August 2004; see paragraphs 6, 7, 13, 14, 16 and 21 above). Before the domestic court, the applicant thus claimed to have suffered pecuniary damage amounting to approximately EUR 190,403 (calculated as per the January 2009 exchange rate; see paragraph 21 above). In addition, the applicant essentially argued that he had had a legitimate expectation of obtaining compensation because his civil claim had satisfied all the legal requirements (see paragraphs 54, 58 and 59 above).

67. The Court reiterates that Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not create a right to acquire property (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011). Future income cannot be considered to constitute "possessions" unless it has already been earned or is definitely payable (see *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 64, ECHR 2007 I; and *Juszczyszyn v. Poland*, no. 35599/20, § 344, 6 October 2022, with further references). Having said that, the Court does not have any doubt that the applicant's lawful business and property rights were affected by the restrictions imposed by a series of decisions by the tax authorities on the use of assets belonging to the applicant's business and his own private assets. To that end, the Court has held on numerous occasions that any seizure entails damage (see, for example, *Borzhonov v. Russia*, no. 18274/04, § 61, 22 January 2009). More specifically, the Court has also held that a seizure which placed a temporary restriction on the disposal of the applicant's property associated with his or her lawful business inevitably affected the capacity of that business to operate normally (see *JGK Statyba Ltd and Guselnikovas v. Lithuania*, §§ 115 and 129, 5 November 2013, and *Džinić v. Croatia*, no. 38359/13, § 61 and 68 *in fine*, 17 May 2016, with further references; also compare *Jucys v. Lithuania*, no. 5457/03, § 34, 8 January 2008). It is implicit in such a state of affairs that the applicant's business also suffered harm to its economic value, goodwill and clientele which had been freely acquired through the years of his business activity. The existence of such damage was in fact confirmed by the first-instance civil court (see paragraphs 23-27 above), even though that issue was not addressed any further by the higher courts in view of the arguments raised by the defendant on appeal.

68. In the light of the above considerations and its settled case-law, as described above, the Court finds that the applicant's interests fall within the rights protected by Article 1 of Protocol No. 1 to the Convention (see paragraphs 60 and 61 above).

(c) Conclusion on admissibility

69. It follows from the above considerations that the application cannot be rejected as incompatible *ratione materiae* with the provisions of the Convention or the Protocols thereto.

70. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

(a) The applicant

71. The applicant submitted that the setting up of mortgages on his real property, the freezing of his business's bank accounts and seizure of its cars, and the enforcement of tax liabilities, all of which had been authorised in tax proceedings found to have been unlawful, had disrupted his business activity to such an extent that his business had registered serious losses.

72. The applicant argued that the burden which he had had to bear had been excessive. Firstly, the State's financial interest would have been sufficiently secured by the imposition of mortgages on his real property only, as its value had been many times higher than the value of the contested tax liabilities. Secondly, the measures had not been lifted as soon as possible, as claimed by the Government. Indeed, if the tax authorities had been capable of concluding, prior to any harmonisation by the Supreme Administrative Court, that the disputed tax decision had been unlawful, they should have revoked the measures in question much earlier, whereas in fact they had been left in place for as long as three years. Thirdly, the damage which the applicant's business had suffered had not been redressed because of the drastic limitation of the State Treasury's liability *vis-à-vis* private individuals. The possibility of seeking compensation was thus theoretical and ineffective. The requirement for the unlawfulness to be flagrant or manifest, which was a subjective qualification, left too much unverifiable discretion and room for arbitrariness on the part of the domestic court adjudicating the case.

(b) The Government

73. The Government argued that an effective legal framework was in place to offer redress for any damage caused by unlawful decisions of the State authorities.

74. The decisions determining the applicant's tax liabilities, however, had not been unlawful *per se*, but rather were flawed owing to an error of law resulting from the existence of two contradictory lines of interpretation of the tax law. The subsequent harmonisation of judicial interpretation by the Supreme Administrative Court in the years 2007 and 2009 did not render previous tax decisions unlawful simply because they had followed an interpretation which had been valid at the time.

75. Moreover, the imposition of the measures had been justified, as reasoned in the relevant decisions, by the need to protect the interests of the State Treasury and because the value of the fixed assets of the applicant's business had not been sufficient to cover his tax liabilities and there had been a risk that he would not discharge them.

76. The Government also submitted that the impugned measures had not been disproportionately burdensome for the applicant. The value of the secured items reflected the amount of his excise-tax liabilities. The enforcement of the measures had been partly stayed in 2005 and 2006. Immediately after the invalidation of the measures, a decision had been issued declaring that the applicant had overpaid his tax.

77. Overall, the Government submitted that the domestic authorities had struck a fair balance between the applicant's individual interests and the public interests in the present case.

(c) The third party

78. The Helsinki Foundation for Human Rights ("the Foundation") submitted that the system of Polish tax law was based on a tax self-assessment mechanism. In other words, it was a taxpayer's responsibility to determine, on the basis of the applicable tax regulations, whether or not and how much he or she was liable to pay, and to pay the relevant amount to the tax authorities. In the Foundation's view, a self-assessment system combined with the constitutional principle of the rule of law and the principle of trust in the State required that the tax law be coherent, sufficiently specific, stable, functional and clearly structured.

79. The tax law in Poland, in the Foundation's view, did not comply with those requirements; it was complicated and difficult to interpret. Every year, the tax authorities issued official interpretations of various tax provisions in respect of 33,000 individual applications. In the years 2008-16 almost 302,000 of such official tax interpretations had been issued. Such a high demand for tax interpretations proved that the tax law was very ambiguous to taxpayers. Moreover, the tax law was unpredictable and constantly changing. For example, in the seven years following the entry into force of the VAT Act (2004-11), 698 provisions had been subject to amendments, including one section which had been amended fourteen times. In 2013 alone the VAT Act had been amended six times. It had been amended again in 2016, as 1,784 pages of new legislation directly governing tax matters had come into force.

80. The Foundation also submitted that taxpayers were discouraged from suing the State for unlawful tax decisions because of the high costs and small chances of success of such proceedings. They furnished statistics showing that between 2010 and 2016, 112 actions for compensation for unlawful tax decisions had been examined by the Polish courts. Ninety-four of those cases had been won by the State Treasury.

2. *The Court's assessment*

(a) General principles

81. In the context of an interference with property rights the first and most important requirement of Article 1 of Protocol No. 1 is that it should be lawful: the second paragraph recognises that States have the right to control the use of property by enforcing "laws" (see *Iatridis*, cited above, § 58; *Former King of Greece and Others v. Greece* [GC], no. 25701/94, § 79, ECHR 2000-XII; and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). This means that the interference should be in compliance with the domestic law and that the law itself should be of sufficient quality to enable an applicant to foresee the consequences of his or her conduct. As regards compliance with the domestic law, the Court has limited power in this respect, since it is a matter which primarily lies within the competence of the domestic courts (see *OAO Neftyanaya Kompaniya Yukos v. Russia*, no. 14902/04, § 559, 20 September 2011, with further references).

82. Furthermore, whether the case is analysed in terms of a positive duty of the State or in terms of an interference by a public authority which needs to be justified, the criteria to be applied do not differ in substance. In particular, regard must be had to the fair balance to be struck between the competing interests of the individual and of the community as a whole. It also holds true that the aims mentioned in Article 1 of Protocol No. 1 may be of some relevance in assessing whether a

balance between the demands of the public interest involved and the applicant's fundamental right of property has been struck. In both contexts the State enjoys a certain margin of appreciation in determining the steps to be taken to ensure compliance with the Convention (see *Broniowski*, cited above, § 144, and *JGK Statyba Ltd and Guselnikovas*, cited above, § 118, with further references).

83. The positive obligations inherent in Article 1 of Protocol No. 1 may entail the taking of measures necessary to protect property rights, particularly where there is a direct link between the measures an applicant may legitimately expect from the authorities and his or her effective enjoyment of his or her possessions, even in cases involving litigation between private entities. That means, in particular, that States are under an obligation to provide a judicial mechanism for settling property disputes effectively and to ensure the compliance of those mechanisms with the procedural and material safeguards enshrined in the Convention. This principle applies with all the more force when it is the State itself which is in dispute with an individual (see *Plechanow v. Poland,* no. 22279/04, §§ 99 and 100, 7 July 2009).

84. A right to compensation is not inherent in the second paragraph of Article 1 of Protocol No. 1 to the Convention regarding the control of the use of property (see *J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd*, cited above, § 79; and *Banér v. Sweden*, no. 11763/85, Commission decision of 9 March 1989, Decisions and Reports 60, p. 128, at p. 142). It follows that, where a measure controlling the use of property is in issue, a lack of compensation is not of itself sufficient to constitute a violation of Article 1 of Protocol No. 1. It is, however, a factor to be taken into consideration in determining whether a fair balance has been achieved (see *Anonymos Touristiki Etairia Xenodocheia Kritis v. Greece*, no. 35332/05, § 45, 21 February 2008, and *Depalle v. France* [GC], no. 34044/02, § 91, ECHR 2010, with further references). For example, in a case in which the authorities had seized and held chattels as physical evidence in criminal proceedings, the Court considered that – in the context of Article 13 taken in conjunction with Article 1 of Protocol No. 1 to the Convention – domestic legislation should provide for the possibility of initiating proceedings against the State and seeking compensation for any damage resulting from the authorities' failure to keep the chattels safe and in reasonably good condition. This is especially true in instances when the interference itself is found to have been unlawful (see, *mutatis mutandis*, *Karamitrov and Others v. Bulgaria,* no. 53321/99, § 77, 10 January 2008).

(b) Application of the above principles to the present case

85. The Court observes that the present application relates to a set of restrictions put in place following decisions to impose interim seizure measures (of 19 May 2003) and the subsequent decisions relating to the applicant's excise-tax liabilities (of 21 August 2003 and 2 August 2004). Those restrictions affected the exercise of the applicant's ownership rights in respect of his business's assets and his own private assets (see paragraphs 23, 25 and 30 above), and, as claimed by the applicant, caused him measurable pecuniary damage (loss of business). The tax decisions in question were later declared unlawful and revoked (see paragraphs 18 and 19 above).

86. The Government argued that the decisions determining the applicant's tax liabilities had not been unlawful *per se* but rather were flawed owing to an error of law resulting from the existence of two contradictory lines of interpretation of domestic law (see paragraph 40 above). Domestic practice had later been harmonised by the Supreme Administrative Court but at the material time the initial outcome of the tax proceedings had reflected one of the judicial interpretations of the

relevant provisions on excise tax (see paragraph 41 above). The applicant, on the other hand, maintained that the decisions which had established his excise-tax liabilities had been unlawful, irrespective of the existence of different judicial interpretations of the relevant provisions; in fact, the impugned decisions had been invalidated prior to the harmonisation of the practice. Moreover, he essentially argued that the relevant law on excise-tax liabilities had not been clear (see paragraphs 79 and 80 above). The Court thus takes note of the parties' diverging positions as to the lawfulness of the interference.

87. The Court finds it important to reiterate that, in the case at hand, the measures entailing the seizure of the applicant's property were intended to ensure the payment of excise tax owed by his business. His tax liabilities were at first under examination (starting on 19 May 2003; see paragraphs 6-9 above) and were subsequently established and became enforceable as a result of the nine decisions issued by the first- and second-instance tax authorities (starting on 21 August 2003; see paragraphs 13, 14 and 16 above). The measures remained in place (presumably with the enforcement being gradually stayed in 2005 and early 2006; see paragraph 17 above) until 24 April 2006, when the impugned tax decisions in respect of the applicant's excise-tax liabilities were revoked (see paragraph 18 above).

88. In the circumstances of the present case, the Court considers that the limitation on the applicant's right to the peaceful enjoyment of his possessions is not in itself open to criticism, particularly in view of the legitimate aim pursued and the margin of appreciation afforded by the second paragraph of Article 1 of Protocol No. 1 to the Convention. However, the risk with such a system is that it may unreasonably restrict an applicant's ability to administer his or her possessions, particularly if the proceedings are protracted, as they were in the instant case. Moreover, the Court is not satisfied that that the domestic authorities have given sufficient consideration to the possibility of taking less intrusive measures with respect to the applicant's property.

89. The Court also observes that the first-instance court allowed the applicant's action and awarded compensation in an amount close to that which was sought by him. The domestic court, having regard to the opinion of the expert, held that following the freezing of his bank account and the seizure of his vehicles, the applicant had been unable to continue operating his business and had suffered significant losses (see paragraphs 22 and 24 above). That court also considered that, among the numerous decisions which had been issued by the authorities starting on 19 May 2003, it was the decision of 2 August 2004 of the Szczecin Customs Chamber which had been fatal to the applicant's business. That decision had led to the freezing of the applicant's bank accounts and had effectively obstructed his business transactions (see paragraph 25 above).

90. The Court is of the view that, despite the ultimate quashing of that judgment by the appellate court, the finding of fact made by the first-instance court indicates that the applicant had indeed suffered significant pecuniary damage, and that the damage in question had directly been caused by the measures ordered by various State authorities (see, *mutatis mutandis*, *Tarnawczyk v. Poland*, no. 27480/02, § 104, 7 December 2010).

91. The applicant was therefore made to bear important financial consequences of the divergent practice of public authorities, whereas, it is for the State to take responsibility for mistakes or omissions resulting from their actions.

92. In the light of the above considerations, the Court finds that the restrictions imposed on the applicant's personal and business property for three years constituted an individual and excessive burden on him, upsetting the "fair balance" which should be struck between the protection of the right of property and the requirements of the general interest (see, *mutatis mutandis*, *Džinić*, cited above, and *Lachikhina v. Russia*, no. 38783/07, 10 October 2017).

93. Consequently, there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

94. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

95. The applicant claimed 183,132 euros (EUR) in respect of pecuniary damage. He explained that that amount was equivalent to the losses he had suffered while unable to operate his business owing to the impugned seizure measures. It was also in line with the award made by the first-instance court in the civil proceedings (see paragraph 22 above). In the event that the Court did not make any award in respect of pecuniary damage, he claimed EUR 100,000 in respect of non-pecuniary damage for the suffering caused by "difficulties in his professional and private life".

96. The Government argued that the applicant's claim in respect of pecuniary damage was groundless and that the claim in respect of non-pecuniary damage was unspecific, unjustified and, in any event, exorbitant.

97. In the circumstances of the present case, the Court considers that, as far as the award to be made in respect of damage is concerned, the question of the application of Article 41 is not ready for decision (see *Łysak*, cited above, § 96). That question must accordingly be reserved and the subsequent procedure fixed, having regard to any agreement which might be reached between the Government and the applicant (Rule 75 §§ 1 and 4 of the Rules of Court).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that the question of the application of Article 41 of the Convention is not ready for decision and accordingly,

   (a) reserves the said question;

   (b) invites the Government and the applicant to submit, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, their written observations on the amount to be awarded to the applicant in respect of damage and, in particular, to notify the Court of any agreement that they may reach;
4. *Reserves* the further procedure and delegates to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 5 October 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar
Marko Bošnjak President